



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

July 16, 2004

Colonel Timothy J. Gallagher
District Engineer
U.S. Army Corps of Engineers
P.O. Box 898
Anchorage, Alaska 99506-0898

Re: POA-2004-865-2
Nichols Passage

Attn: Dr. Jan Stuart

Dear Colonel Gallagher:

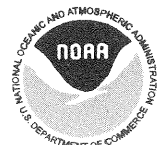
The National Marine Fisheries Service (NMFS) has reviewed the above referenced application by James and Marlene Scanlon to fill 5925 square feet below the high tide line with 3000 cubic yards of material to create a pad for a single-family residence in Ketchikan.

Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act requires Federal agencies to consult with NMFS on all actions that may adversely affect Essential Fish Habitat (EFH). NMFS is required to make conservation recommendations, which may include measures to avoid, minimize, mitigate or otherwise offset adverse effects. The Alaska Department of Fish and Game's Anadromous Streams Catalog indicates that stream 101-47 10250 (Ketchikan Quad B-5) is utilized by all five species of Pacific salmon. Juvenile salmon use the inshore area of Tongass Narrows during spring and early summer for feeding and predator avoidance prior to migration out to sea. The inshore area of the project location also provides important habitat for several marine species including arrowtooth flounder, Pacific cod, sablefish, sculpins, walleye pollock, yellow rockfish, and Pacific ocean perch.

The Corps has concluded that the proposed project will not adversely affect EFH. NMFS disagrees with this conclusion. The proposed project would permanently remove intertidal habitat that is used by commercially important fish species. The proposed fill is for a residence, which is not a water dependent use under Section 404 of the Clean Water Act. The applicants have not demonstrated that they have evaluated options to avoid or minimize the extent of the fill, such as building a piling supported structure. The applicants do not propose any mitigation for the habitat loss.

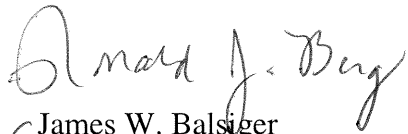
In accordance with Section 305(b)(4)(A) of the Magnuson-Stevens Act, NMFS offers the following conservation recommendation:

The request to place fill in the intertidal zone for a house pad should be denied. The applicant should examine less damaging options for building the house, including building a pile-supported structure.



Please contact Katharine Miller at 907-586-7643 if you have any questions or for further coordination.

Sincerely,


For James W. Balsiger
Administrator, Alaska Region

cc: Applicant
EPA Juneau, Chris Meade
ADF&G, Janet Schempf
ADEC, ADNRR, USFWS, Juneau